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I, Elaine Willig, hereby certify that the below identified
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Signature: Elaine Willig

Pages being transmitted:

1. Response to Restriction Requirement (2
pages)

Total No. of Pages including this cover letter: 3

Application No.: 10/707,236
Filed: November 29, 2003
Inventor: Di Orio et al.
Attorney Docket No.: OTO-001

COMMENTS:

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Attorney Docket No. OTO-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Susan C. DI ORIO et al. : Confirmation No. 1235
Serial No.: 10/707,236 : Group Art Unit 3764
Filed: November 29, 2003 : Examiner: RICHMAN, Glenn
DEVICE AND KIT FOR BODY STRETCHING

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The primary examiner issued a restriction requirement on March 15, 2005, restricting the claims into two inventions: Group 1, claim 1-8, drawn to a stretching device, and Group II, drawn to a kit comprising the stretching device. The Examiner states that the inventions are distinct because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP§ 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus or by hand.

Applicants elect Invention Group I, with traverse.

Applicants traverse the restriction requirement, and contend that there is only one invention being claimed. The Examiner's restriction requirement appears to be a confusion. The Examiner states "Inventions I and II are related as process and apparatus." Applicants' claims are not drawn to an apparatus or a process. It appears that standard language used by the Examiner was not amended to account for the two sets of claims drawn to the device (claims 1-8) and to the kit comprising the device (claims 9-12). The Examiner's written rational does not appear irrelevant. Clarification is requested.

Application No. 10/707,236
Amendment date 03/31/05
Reply to Office Action of 03/15/05


The present claims relate to a sub-combination and a combination. Claim 9, directed to a kit, requires the device as claimed in Claim 1. Therefore, the claims to the combination (the kit) all require each limitation of the sub-combination (the device). The claims are not distinct and restriction appears not to be proper (MPEP § 806.05). The relationship between Claim 1 and Claim 9 is such that the device (sub-combination) of Claim 1 is the essential distinguishing feature of the kit with the device (combination) of Claim 9. According to MPEP § 806.05(c)(ii), these claims are not distinct and a restriction requirement must not be made.

Conclusion

Applicants request withdrawal of the restriction requirement, and a prompt allowance of all claims.

Respectfully submitted,

For: S.C. DiOrio et al.

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March 31, 2005